

PLEASE RETURN Payment of Taxes Under Protest

November 1980



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PAYMENT OF TAXES UNDER PROTEST

A REPORT TO THE

FORTY-SEVENTH LEGISLATURE

HELENA, MONTANA 59601

REVENUE OVERSIGHT COMMITTEE

HELENA, MONTANA 59601

NOVEMBER 1980

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SUMMARY

The Revenue Oversight Committee studied the payment of taxes under protest in Montana in an effort to recommend legislation to clarify the provisions of this important area of taxation law.

The Committee's final recommendation was to provide a streamlined procedure of payment of taxes under protest in which the taxpayer is required to exhaust appeals available under Montana law before bringing an action in court. The recommendation also included a procedure whereby the State Tax Appeal Board may order a refund of taxes paid under protest when it finds that such taxes should be refunded and when no court action has been commenced by either party to the protest.

RECOMMENDATIONS

The Revenue Oversight Committee recommends that the Forty-Seventh Legislature enact the following legislation:

LC 59 - "AN ACT TO GENERALLY REVISE THE PROCEDURE
FOR PAYMENT OF TAXES AND LICENSE FEES
UNDER PROTEST: TO ALLOW THE STATE TAX
APPEAL BOARD TO ORDER REFUND OF PROTESTED
TAXES AND LICENSE FEES IN CERTAIN CASES"

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TO: Revenue Oversight Committee
FROM: Jim Oppedahl, Staff Researcher
RE: Tax Appeal Information

I

INTRODUCTION

At the March 8, 1980 meeting, the Revenue Oversight Committee asked for a research report relative to payment of taxes under protest, the relationship of appeals to the State Tax Appeal Board, and the authority of the State Tax Appeal Board to issue stay orders.

Since 1972 there has been a fundamental shift in part of the tax appeal procedure. Prior to 1972, the nonjudicial tax appeal procedure was vested in a three-member State Board of Equalization appointed by the Governor with the advice and consent of the Senate. This State Board supervised the revenue collection activities of the state of Montana. It also heard appeals.

The obvious conflict of interest between a board that acted as both administrator and judge led the framers of the 1972 Montana Constitution to mandate an independent tax appeal procedure. Article VIII, Section 7, mandated that "The legislature shall provide independent appeal procedures for taxpayer grievances about appraisals, assessments, equalization, and taxes. The legislature shall include a review procedure at the local government unit level."

The traditional judicial avenue of tax appeal through district court has remained essentially unchanged since the 1890's.

The following pages will outline the independent tax appeal procedures at the county and state level, the judicial tax appeal procedure, and attempt to suggest general areas of legislative concern.

II

COUNTY TAX APPEAL BOARD

The current county tax appeal board provisions are found in 15-15-101 through 15-15-106. The County Tax Appeal Board is appointed in each county by the county commissioners. It consists of three members who serve staggered three-year terms. The County Board must meet on the third Monday of April each year to hear protests concerning assessments made by the Department of Revenue. The Board must continue in session for that purpose from time to time until the business of hearing protests is disposed of, but in no case can it meet later than 60 days after the Department of Revenue or its agent has mailed notice of classification and appraisal to all property owners and has notified the Board. A taxpayer who seeks a reduction in the valuation of his property must file an appeal with the County Board on or before the first Monday in June of that year or within 15 days after receiving a notice of classification and appraisal from the Department of Revenue (whichever is later).

The County Board, during its hearing, may change any assessment or fix the assessment at some other level. If the Board refuses or fails to hear a taxpayer's timely application for a reduction in valuation of property, the taxpayer's application is considered to be granted on the day following the Board's final meeting for that year.

Any person aggrieved by the action of a county tax appeal board has the right to appeal to the State Tax Appeal Board.

III

STATE TAX APPEAL BOARD

The State Tax Appeal Board (STAB) is composed of three members appointed by the Governor with the advice and consent of the Senate. Each member holds office for a six-year term. The Governor designates the chairman. STAB is in continuous session and open for the transaction of business every day except Saturdays, Sundays, and legal holidays.

15-2-201, MCA, prescribes the powers and duties of STAB. The Board has the duty to (1) prescribe rules for the tax appeal boards of the different counties and may schedule meetings of county tax appeal boards; (2) hear appeals from decisions of county tax appeal boards; and (3) hear appeals from decisions of the Department of Revenue in regard to business licenses, property assessments, taxes, and penalties. Section 15-2-201, MCA, also provides that the State Tax Appeal Board shall have the duties of an appeal board relating to such other matters as may be provided by law.

A person or the Department of Revenue or a municipal corporation aggrieved by an action of the county tax appeal board may appeal to the State Board by filing a notice of appeal with the county tax appeal board and a duplicate thereof with the State Board within 20 calendar days after the receipt of the decision of the county board. STAB must set a hearing for any such appeal and give at least 15

calendar days' notice of the time and place of such hearing. 15-2-301(4), MCA, provides that in any appeal from a county tax appeal board decision, the State Board is not bound by common law and statutory rules of evidence or rules of discovery. STAB may affirm, reverse, or modify any county board decision. The decision of STAB is final and binding upon all interested parties unless it is reversed or modified by judicial review.

15-2-302, MCA, provides that a person may appeal to STAB any action of the Department of Revenue involving specific tax laws. The appeal must be made by filing a complaint with the Board within 30 days following receipt of notice of any action by the Revenue Department. The Department is required to file a response to the complaint within 30 days. STAB is required thereafter to hear the parties in accordance with the contested case provisions of the Montana Administrative Procedure Act.

In both the case of a county tax appeal board and the State Tax Appeal Board, after a proceeding has commenced before either board but before arguments have been heard, the parties to the proceeding may petition the district court to make an interlocutory adjudication. The petition for such adjudication must be signed by each party to the proceeding. The court may grant such a petition if it appears that the issues presented involve the interpretation of a constitutional provision, statute, or regulation, and do not require the hearing the evidence to be resolved. The court can also consider whether the granting of such a petition would expedite the adjudication of the controversy.

Finally, any party to an appeal before STAB aggrieved by a final decision of the Board is entitled to judicial review. Such review must be instituted by filing a petition in district court in the county wherein the taxable property or some portion thereof is located. The party to such a petition must also serve a copy of the petition on STAB within 30 days after rendering of the final decision by the Board, or if a rehearing is requested, within 30 days after the decision on that rehearing.

IV

JUDICIAL TAX APPEAL

The traditional tax appeal process in Montana is judicial. Montana law provides that any license fee or tax that is considered unlawful by the person from whom the tax or fee is demanded may be paid under protest. Payment under written protest must specify the grounds of the protest; thereupon the party so paying may bring an action in a court of competent jurisdiction against the officers to whom the tax was paid. The action must be instituted or commenced within 90 days after the date of payment under protest of the taxes or fees.

In addition to the general requirements of protest payments under 15-1-401 and 15-1-402, MCA, 15-1-403 provides that any person who has appeared before a county tax appeal board or before the State Tax Appeal Board to contest an assessment and is aggrieved by the final action of the State Board, may pay the tax under protest.

Payments made under protest are to be deposited by the treasurer of the county or municipality to the credit of a special fund designated as a protest fund and invested in interest-bearing deposits in local banks or savings and loan associations. This money is to be retained in such a protest fund until the final determination of any suit or action to recover the tax is made. The provision creating special protest fund deposits does not apply to any payments made under protest directly to the state.

Unlike the county and state tax appeal board procedures, payment under protest has no time deadlines for the appeals and hearing process other than the 90-day requirement for commencing an action.

V

STATE TAX APPEAL BOARD STAY ORDERS

STAB has issued stay orders on the payment of taxes during the pendency of appeals before it since November of 1978. The validity of STAB stay orders, as the Committee well knows, is subject to considerable disagreement. Stay orders have been variously respected and ignored by county authorities.

Appendix A presents an opinion by STAB's attorney on the validity of stay orders. The attorney argues that STAB, "as the state tax appeals body, has the specific authority to confirm, reverse, or modify any decision of a county tax appeal board." "An express grant of power" he argues, "is deemed to include such other powers as are necessarily or reasonably incident to the powers granted." In the exercise of its statutory tax appellate powers, the attorney goes on to argue that STAB has the "implied power to grant stay orders to maintain the status quo, or to prevent irreparable damage during the pendency of a tax appeal in the same manner as the courts' power to grant stay orders. This is particularly true in the case of staying payment of taxes during the appeal since STAB has no authority to order the county to refund the taxes paid in the event relief is granted to the taxpayer...."

Those who do not agree with the validity of STAB stay orders generally argue that the Board, as an administrative board with quasi judicial powers, has only those specific powers granted by the legislature. They also point to the judicial remedy of paying taxes under protest and filing suit in a district court.

The Revenue Department disagrees with the opinion by the STAB attorney which noted that the Department of Revenue, has "accepted and complied with stay orders issued by STAB ...thereby acquiescing to the validity of said orders." The Department argues that the stay orders are not even directed to them.

The validity of State Tax Appeal Board stay orders has not been challenged in any court and therefore the issue remains one of competing opinions.

VI

PROBLEMS

There are a number of problems that make the tax appeal process frustrating in Montana. A primary problem involves the uncertainty of which of the two channels of appeal a taxpayer will choose. While the laws regarding tax appeal boards seem to envision strictly constitutional and legal interpretations being handled by a district court, there is no clear indication that a county tax board or STAB cannot make a ruling of law. STAB has ruled on both questions of constitutionality and statute interpretation.

The district courts themselves do not follow uniformly a procedure that demands exhaustion of administrative remedies before accepting a case.

Timing is a major problem. As Committee members can see in Appendix B, the budgeting process for schools, cities, and counties generally occurs in a two-month period -- late June to early August. August 11, 1980, is the date upon which final budgets are adopted and the tax levy for the year is fixed.

Appendix C outlines the tax appeal calendar for 1980. County tax appeal boards began meeting on April 21. Tax appeals can continue to come before the county boards 15 days after receipt of classification and appraisal. 15-8-201, MCA, sets the second Monday in July as a deadline for the Department of Revenue to have ascertained the names of all taxable inhabitants and assess property. The mailing of actual notices could conceivably come later than the second Monday in July. The county tax appeal boards would still be hearing cases by the August 11 deadline for setting budgets and fixing levies.

An additional problem is that the number of tax appeals going to STAB has increased dramatically in the last two years. The chairman of STAB estimates that 20 to 30 percent of county tax appeal board decisions were appealed to STAB prior to 1979. The current rate is a staggering 50 percent. Much of this can undoubtedly be traced to the reappraisal process.

Besides the increase in number of cases appealed to STAB -- 300 appeals a year from 1973 to 1977 to more than 2765 in 1979 -- the cases have also become more complicated.

VII

CONCLUSION

Solutions to these problems are difficult and really beyond the scope of this brief paper. However, during the writing of this report several suggestions and comments were made that may deserve consideration. Montana law allows the accumulation of reserves to prevent registration of warrants. The April issue of *Montana Taxpayer* noted that for the budget year 1979-80 public schools are carrying \$58.9 million in reserves and counties \$17.4 million. Public schools have another \$7.1

million in bus and building reserves. This money is available to local government to solve some cash flow problems pending settlement of tax appeals.

Financial problems because of stay orders may necessitate legislative action. Officials at STAB indicated that stay orders could be avoided if STAB had the authority to order refunds to taxpayers.

Finally, another possible solution might be legislation to clarify when a taxpayer must appeal through the county and STAB before going to district court.

JO:ee

OPINION

TO: STATE TAX APPEAL BOARD
FROM: CHARLES A. SMITH, ATTORNEY
RE: VALIDITY OF STATE TAX APPEAL BOARD STAY ORDERS

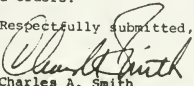
You have requested my opinion as to whether the State Tax Appeal Board (S.T.A.B.) has authority to stay the payment of taxes during the pendency of any appeal before it.

Article VIII, Section 7, 1972 Montana Constitution, provides that the legislature shall establish independent appeal procedures for taxpayer grievances. Chapter 405, Laws of 1973, was enacted to implement the constitutional directions by creating S.T.A.B. and conferring on it general tax appellate powers. S.T.A.B., as the state tax appeals body, has the specific authority to affirm, reverse, or modify any decision of a county tax appeal board. 15-2-302(4), MCA. An express grant of powers is deemed to include such other powers as are necessarily or reasonably incident to the powers granted. The rule is stated in 1 Am Jur 2d, Administrative Law, §46, p. 846, thusly:

"In the construction of a grant of powers, it is a general principle of law that where the end is required the appropriate means are given and that every grant of power carries with it the use of necessary and lawful means for its effective execution. There is therefore conferred by necessary implication every power proper and necessary to the exercise of the powers and duties expressly given and imposed."

It is my opinion that S.T.A.B., in the exercise of its statutory tax appellate powers, has the implied power to grant stay orders to maintain the status quo or to prevent irreparable damage during the pendency of a tax appeal in the same manner as the court's power to grant stay orders. This is particularly true in the case of staying payment of taxes during the appeal since S.T.A.B. has no authority to order the county to refund the taxes paid in the event relief is granted to the taxpayer and the taxpayer would thereby suffer irreparable damage. Furthermore, the state's biggest taxing authority, the Department of Revenue, has accepted and complied with stay orders issued by S.T.A.B. since its creation in 1973 thereby acquiescing to the validity of said orders.

Respectfully submitted,


Charles A. Smith
Special Assistant Attorney General

1980 PROPERTY TAX CALENDAR

Public School Budget Dates

- June 23 On the fourth Monday in June, trustees of every school district meet and adopt preliminary budgets. By law, taxpayers are permitted to attend these meetings.
- July 10-20 On or before the fifth day after the fourth Monday in June preliminary budgets must be filed with the County Superintendent of Schools.
- July 28 Between the 10th and 20th days of July, county superintendents must publish a notice that all school budgets are on file and open for public inspection.
- August 11 At 10:00 a.m. on the fourth Monday in July, the county budget boards, consisting of county commissioners and county superintendents of schools, begin consideration of final budgets. Taxpayers may be heard.
- August 11 The second Monday in August, final budgets are adopted and levies fixed. Corrections and changes in the proposed appropriations, revenue estimates and mill levies may be made at this time.

County Budget Dates

- June 10 On or before the tenth day of June, all county officers and departments after carefully studying the previous years' experience, must prepare estimates of expenditures and revenue for the ensuing year.
- July 7 On or before the first Monday of July the county clerk must tabulate departmental estimates and submit the same to the county commissioners.
- July 14 On or before the second Monday of July the commissioners must complete the preliminary budget. Notice must be published so taxpayers may make inspection of the budget.
- August 6 On the Wednesday immediately preceding the second Monday in August, the county commissioners must conduct a public hearing on the budget. Taxpayers may appear and inquire into proposals made. Hearings may be continued from day to day until the second Monday in August.
- August 11 The second Monday in August the final county budget is adopted and tax levies are fixed for the year.

Municipal Budget Dates

- July 10 On or before the tenth day of July all municipal departments must submit expenditure and revenue estimates to the city clerk.
- July 20 On or before the 20th day of July, complete tabulations of expenditure and revenue estimates must be submitted to the council by the clerk.
- July 25 After careful review and revisions, the council must adopt the preliminary budget on or before the twenty-fifth day of July. The clerk must publish a notice stating that the budget is on file for inspection by the taxpayers.
- August 6 On the Wednesday immediately preceding the second Monday in August the city council conducts a formal budget hearing. Taxpayers may appear and voice approval or opposition to budget items.
- August 11 The second Monday in August the final city budget is adopted and the tax levy for the year is fixed.

1980 TAX APPEAL CALENDAR

County Tax Appeal Board

- April 21 County Board must meet to hear appeals concerning assessments made by the Department of Revenue. It must continue to do so from time to time until the business of hearing protests is complete -- but not later than 60 days after the Department has (1) mailed notice of classification and appraisal to all property owners, and (2) has notified the the county tax appeal board that classification and appraisal notices have been mailed to all property owners.
- June 2 A party or his agent affected by the valuation of property must make and file with the county tax appeal board a written application for a hearing on or before the first Monday in June -- or 15 days after receiving a notice of classification and appraisal from the Department of Revenue, whichever is later. The provision of "or 15 days after receiving a notice of classification and appraisal" can involve a much later date than the June 2 deadline. For instance, if the assessment list is not actually mailed until June 2, and the person "receiving" his assessment happens to be on vacation or away for two weeks, the question of receiving may delay the entire process for another 15 or 20 days. If the assessments go out as late as June, then the county tax appeal board has 60 days from that date.
- 20 days Any person aggrieved by the action of county tax appeal board may appeal to the state board by filing with the county tax appeal board a notice of appeal and a duplicate thereof with the State Board within 20 calendar days after the receipt of the decision of the county board.
- 15 days The State Board must set an appeal from the county board and give to the appellant and to the county board at least 15 calendar days notice of the time and place of such hearing.
- The process at STAB hearings, final decisions, and mailing out the notice of final decisions may take a week or three months, or much longer.



REVENUE OVERSIGHT COMMITTEE

MONTANA STATE LEGISLATURE

SENATOR JEAN TURNAGE, Chairman
 REP. HERB HUENNEKENS, Vice Chairman

State Capitol, Room 138
 Helena, Montana 59601
 Phone 449-3064

July 3, 1980

TO: Revenue Oversight Committee

FROM: Jim Oppedahl *JO* Staff Researcher

RE: RULES: Assessment of Heavy Equipment
 Assessment of Manufacturing & Mining Equipment
 Adjusted Gross Income of Spouses on Separate Returns

→ Tax Appeal Procedure Bill Draft
 Agricultural Productivity Tables

The Department of Revenue has noticed amendment of rules relating to the assessment of heavy equipment and assessment of manufacturing and mining equipment. This notice completes the Department's rules amendment procedure and is accompanied by a very long series of tables. The tables will be available at the July 12 meeting, or if any member would like to see them prior to that, I would be glad to send them out if you will give me a call.

The second notice of Department decision on a proposed amendment of a rule relating to the adjusted gross income of spouses on separate returns is again an action that has been in the public hearing and proposed stage since January. This notice simply confirms the Department's decision not to adopt the Committee's proposal that would enable the taxpayer to report his Montana adjusted gross income on a split return.

Tax Appeal Procedure Draft Bill

Enclosed for the Committee's discussion is a draft bill requested at the May 10, 1980 meeting relating to the procedure for payment of taxes under protest. The Committee requested several different ideas be incorporated in a bill, some of which I found to be perhaps mutually exclusive, particularly the idea of having payment of taxes under protest to STAB with STAB also having stay power. These two seem to be somewhat exclusive, each of the other.

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The bill that is presented here is for discussion and refinement. The bill essentially states that the purpose of the act is to ensure an orderly procedure for the payment of license and taxes under protest and to ensure that a taxpayer has exhausted all available administrative remedies prior to filing an appeal in District Court. The taxpayer, of course, under a section of the State Tax Appeal Board's statute would retain the right to go directly to court after an appeal had been filed with STAB but before a hearing had begun.

The second section of the bill allows the State Tax Appeal Board to issue a judgment against the treasurer holding protest funds when the Board finds that a license or tax should be refunded. The Board is not allowed -- under subsection 2 of this section -- to issue the order until 30 days after the final decision of STAB has been rendered or if the final decision of the State Tax Appeal Board has been appealed in accordance with law.

Section three of the bill amends a section of law to clarify that the county commissioners must order the treasurer of a unit of local government holding a portion of taxes paid under protest to refund those taxes when so ordered by STAB.

Section four moves into the area of the payment of taxes under protest in Montana law. It reorganizes the section and rewords it somewhat and then goes on in subsection 2 to clarify that only after having exhausted administrative remedies available at the County Tax Appeal Board and State Tax Appeal Board level may a person bring an action in a court of competent jurisdiction.

One thing that the Committee will certainly wish to consider is the word in subsection 1 of "improper". This has been changed to point out a possible area where another word or words other than "unlawful" may be used. Perhaps this language ought to be "unlawful and discriminatory". Or there may be some other word that the Committee wishes to use besides "unlawful".

In subsection 8(b) of this same section the language is changed so that the treasurer of a county or municipality must refund protested taxes when ordered to do so by STAB.

Section five of the draft bill is a technical amendment and deletes a number of references that are no longer necessary due to changes in the first part of the bill.

The repealer repeals three sections. Sections 15-15-105 and 15-15-106, MCA, are repealed because they allow a person to go to court at the County Tax Appeal Board level. The Committee will want to examine

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this closely to decide whether a person ought still to be able to leave the appeal procedure at the county level and go to court, or whether that remedy ought not to be available until they get to the State Tax Appeal Board level.

The last section in the draft bill repealer repeals section 15-1-401, MCA. This section seems to be duplicative and contradictory of section 15-1-402, MCA. Both the Committee and the legal personnel of the Revenue Department and STAB ought to take a close look at these two sections. Is 15-1-401 contradictory and unnecessary?

The draft bill for discussion purposes needs to be examined closely, particularly by individuals at the State Tax Appeal Board and the Revenue Department. Any suggestions for other inclusions or different language would be very much appreciated in order to make this law compact and clear.

Research Outline -- Productivity Tables

The research outline presented in the April 30, 1980 memorandum to the Committee summarized the research tasks that were probably necessary in considering administrative and financial impacts of updating the values used in assessing agricultural land to reflect current crop prices and costs of production, and in allowing a deduction for the property tax paid on agricultural land from property tax due on livestock and machinery. The Committee may want to refer to that outline in further discussing the task of updating the tables used by the Department of Revenue for establishing productive value of agricultural land.

In discussions with the personnel of the Property Assessment Division, the research outline probably needs a couple of additions and they have brought up several problems that may be encountered in the research tasks.

Since agricultural land is exempt from the Realty Transfer Act, no market value ratios for agricultural land would be available to a Committee without legislative authorization to acquire such data.

The first part of the research outline is estimated to take four to six months to do a sampling of the scope of the problem. No estimates of costs or manpower involved were made, but it would have to be a fairly sophisticated sampling to establish the scope of the problem.

In section II of the research outline, a number of decisions would need to be made about the updating to reflect current commodity prices and production costs. Current commodity prices are apparently not

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difficult to obtain, but obtaining current production costs could be extremely difficult and would never be quite as "current" as were the commodity prices. There would probably need to be a section II A added to the outline to update the grading system itself for changes in productivity due to farming methods, chemical tillage, no tillage, etc.

The rest of the research outline would involve fairly straight-forward accounting and research analysis but would probably still take quite a bit of time to accomplish.

In the discussion of the Committee on the updating of the tables, there are a number of considerations that the Committee may want to investigate or analyze. They are listed below:

1. Upon what should productive value be based: bushels per acre; net income per acre?
2. Should averages be averages of statewide or regional conditions?
3. Should the tables be concerned with all crops grown in the state? Or just major crops?
4. Should the tables consider all the normal expenses for each type or class of land? How do you establish what a normal expense is?
5. Should the tables or the formula used show a relationship of income (gross) to expenses, as production levels increase and decrease?
6. Should the tables reflect present production capacities? In other words, should they establish higher grading limits per each class if production averages warrant and technical capabilities allow it?
7. Should there be an inclusion of a specific wasteland category within the tables?
8. Should there be conversion guides on production of various crops per each class of land?
9. What should be the base year for determining productivity in the tables?
10. Should formulas for determining values be calculated in a way that new income and cost data can be replaced at least every five years for updating per acre values?

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In Appendix A I have presented several examples of memoranda generated during the 1960 period when the tables under discussion were being calculated. The memorandum from Frank J. Moze, dated March 13, 1962, is rather interesting as an example of how the Committee charged with creating the tables went about its work. In the second and third paragraphs on the first page and the paragraph on the third page there is an interesting picture of how the information was gathered in the process of creating the original tables. Keep in mind that the memorandum went out on March 13, 1962; it asked for information to be back by April 1, 1962.

The remaining sections behind the memorandum show some of the computations made by the special study committee. Of particular interest are some of the values that were used and the assumptions about percentage rates used. Also there was a "state board relative value index" that was used to arrive at an assessed value per animal unit. The material is presented as background for the Committee's discussion of the current tables.

Please contact me at 449-3064 if you have any questions or if I can provide any additional information.

JO:ee
Enc.

1 _____ BILL NO. _____

2 INTRODUCED BY _____

3 BY REQUEST OF THE REVENUE OVERSIGHT COMMITTEE

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
6 PROCEDURE FOR PAYMENT OF TAXES AND LICENSE FEES UNDER
7 PROTEST; TO ALLOW THE STATE TAX APPEAL BOARD TO ORDER REFUND
8 OF PROTESTED TAXES AND LICENSE FEES IN CERTAIN CASES;
9 AMENDING SECTIONS 15-1-402, 15-1-403, 15-2-303, AND
10 15-16-601, MCA; AND REPEALING SECTIONS 15-1-401, 15-15-105,
11 AND 15-15-106, MCA."

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 NEW SECTION. Section 1. Purpose. It is the purpose of
15 [this act] to insure an orderly procedure for the payment of
16 taxes and license fees under protest and to insure that a
17 taxpayer has exhausted all available remedies prior to
18 filing an appeal in district court.

19 NEW SECTION. Section 2. Board may order refund. (1) In
20 any appeal before the state tax appeal board when a taxpayer
21 has paid taxes or license fees under written protest and the
22 taxes or license fees are held by the treasurer of a unit of
23 local government in a protest fund, the state tax appeal
24 board shall enter judgment, exclusive of costs, if the board
25 finds that the taxes or license fees should be refunded.

1 (2) The state tax appeal board may not issue a judgment
2 pursuant to subsection (1) above if:

3 (a) the time period for appeal specified in 15-1-402(4)
4 has not passed; or

5 (b) the final decision of the state tax appeal board
6 has been appealed in accordance with 15-2-303.

7 Section 3. Section 15-16-601, MCA, is amended to read:
8 "15-16-601. Taxes or penalties illegally collected to
9 be refunded. (1) Any taxes, per centum, and costs paid more
10 than once or erroneously or illegally collected or any
11 amount of tax paid for which a taxpayer is entitled to a
12 refund under 15-16-612 or any part or portion of taxes paid
13 which were mistakenly computed on government bonus or
14 subsidy received by the taxpayer may, by order of the board
15 of county commissioners, be refunded by the county
16 treasurer. Whenever any payment shall have been made to the
17 state treasurer as provided in 15-1-504 and it shall
18 afterwards appear to the satisfaction of the board of county
19 commissioners that a portion of the money so paid should be
20 refunded as herein provided, said board of county
21 commissioners may refund such portion of said taxes,
22 penalties, and costs so paid to the state treasurer, and
23 upon the rendering of the report required by 15-1-505 the
24 county clerk and recorder shall certify to the state
25 auditor, in such form as the state auditor may prescribe,

1 all amounts so refunded, and in the next settlement of the
2 county treasurer with the state, the state auditor shall
3 give the county treasurer credit for the state's portion of
4 the amounts so refunded.

5 (2) Upon the entering of judgment under [section 2],
6 the county commissioners of the affected county shall order
7 a refund of such portion of the taxes or license fees as the
8 state tax appeal board has judged should be refunded.

9 (2)(3) When any part of the taxes, penalties, or costs
10 hereinbefore referred to were levied in behalf of any school
11 district or municipal or other public corporation and
12 collected by the county treasurer, the same may be refunded
13 upon the order of the board of county commissioners.

14 (3)(4) No order for the refund of any taxes, license
15 fees, per centum, or costs under this section shall be made
16 except upon a claim therefor, verified by the person who has
17 paid such tax, license fee, penalty, or costs or his
18 guardian or, in case of his death, by his executor or
19 administrator, which claim must be filed within 10 years
20 after the date when the second half of such taxes would have
21 become delinquent if the same had not been paid.

22 (4)(5) All refunds ordered to be paid by the board of
23 county commissioners shall be paid by the county treasurer
24 out of the general fund of the county, and the county
25 treasurer shall then make such transfers from other county

1 funds and from state, school district, and other public
2 corporation funds in his possession as may be necessary to
3 reimburse the county general fund for payments made
4 therefrom on account of such other funds."

5 Section 4. Section 15-1-402, MCA, is amended to read:

6 "15-1-402. Payment of taxes under protest -- action to
7 recover. (1) ~~in--all--cases-of--levy-of--taxes--licenses--or~~
8 ~~other--demands--for--public--revenue--which--are--deemed--unlawful~~
9 ~~by--the--party--whose--property--is--thus--taxed--or--from--whom--such~~
10 ~~tax--or--license--is--demanded--or--enforced;--such--party--may~~
11 ~~before--such--tax--or--license--becomes--delinquent;--pay--under~~
12 ~~written--protest--such--portions--of--such--tax--or--license--deemed~~
13 ~~unlawful--to--the--officers--designated--and--authorized--to~~
14 ~~collect--the--same;--specifying--the--grounds--of--protest;~~
15 ~~thereupon--the--party--so--paying--or--his--legal--representatives~~
16 The person upon whom a tax or license fee is being imposed
17 may, before the tax or license fee becomes delinquent, pay
18 under written protest that portion of the tax or license fee
19 protested. The payment must:

20 (a) be made to the officer designated and authorized to
21 collect it; and

22 (b) specify the grounds of protest.

23 (2) After having exhausted the appeals available under
24 Title 15, chapters 2 and 15, a person or his legal
25 representative may bring an action in any court of competent

1 jurisdiction against the officers to whom said ~~license--or~~
2 tax or license fee was paid or against the county or
3 municipality in whose behalf the same was collected and the
4 department of revenue.

5 (3) Both the officers to whom the ~~license-fee-or tax or~~
6 license fee was paid or the county or municipality in whose
7 behalf the same was collected and the department of revenue
8 must be served with timely summons and complaint within the
9 time prescribed.

10 (4) Any action instituted to recover any such portions
11 of ~~license-or tax or license fee~~ paid under protest shall be
12 commenced and summons timely served within 90 60 days after
13 the date of ~~payment-of-the-same~~ the final decision of the
14 state tax appeal board.

15 (5) When any such ~~license-or~~ protested tax or license
16 fee is payable in installments, the ~~--first--installment~~
17 ~~portion-of-such-tax-or-license-as-may-be-deemed-unlawful-may~~
18 ~~be-paid-under-written-protest-and-suit-commenced-and-summons~~
19 ~~served---to---recover---the---same---within---the---time---herein~~
20 ~~prescribed--and--if--any--subsequent--installment--of--such~~
21 ~~license--or-tax-shall-become-due-or-payable-before-the-final~~
22 ~~determination-of-the-suit-commenced--to--recover--the--first~~
23 ~~installment--portion--paid--under--protest,~~ then such any
24 subsequent installment portion deemed considered unlawful
25 may also be paid under written protest and no ~~sue-or~~ action

1 ~~or suit~~ need be commenced to recover the same, but the
2 determination of the ~~suit-or~~ action or suit commenced to
3 recover the first installment portion paid under protest
4 shall determine the right of the party paying such
5 subsequent installment to have the same or any part thereof
6 refunded to him.

7 (6) All such portions of ~~licenses-and taxes when-so~~ and
8 license fees paid under protest shall be deposited by the
9 treasurer of the county or municipality to the credit of a
10 special fund to be designated as a protest fund and shall be
11 invested in interest-bearing deposits in local banks or
12 savings and loan associations and retained in such protest
13 fund until the final determination of any ~~suit-or~~ action or
14 suit to recover the same.

15 (7) Nothing contained herein prohibits the investment
16 of the moneys money of this fund in the state unified
17 investment program. The provision creating the special
18 protest fund does not apply to any payments made under
19 protest directly to the state.

20 (2)(8) (a) If no action is commenced within the time
21 herein specified or if such action be is commenced and
22 finally determined in favor of the county or municipality or
23 treasurer thereof, the amount of the protested portions of
24 the ~~license-or tax~~ or license fee shall be taken from such
25 the protest fund and deposited to the credit of the fund or

1 funds to which the same property belongs, ~~but if,~~

2 (b) If such action is finally determined adversely to
3 such a county or municipality or the treasurer thereof, then
4 the treasurer shall, upon receiving a certified copy of the
5 final judgment in said action from the state tax appeal
6 board, or from a district court if the final action of the
7 state tax appeal board is appealed in the time prescribed,
8 refund to the person in whose favor such judgment is
9 rendered the amount of such protested portions of the
10 license--or tax or license fee, with costs of suit and
11 interest at the rate currently paid on short-term
12 interest-bearing time deposits in banks in the county or 5%
13 a year, whichever is greater, from the date of payment under
14 protest. If such action was commenced for the purpose of
15 recovering the first installment portions of any such
16 license--or tax or license fee and any subsequent installment
17 thereof has been paid under protest as herein provided, then
18 the county treasurer shall, at the time of refunding the
19 amount of such first installment required by such judgment,
20 also refund such portion of any subsequent installment as
21 the person holding such judgment is entitled to recover,
22 together with interest thereon at the rate of 6% a year from
23 the date of payment under protest."

24 Section 5. Section 15-1-403, MCA, is amended to read:

25 "15-1-403. Assessment for taxation -- increase over

1 statement of owner. (1) Whenever any person has delivered to
2 the department of revenue or its agent a sworn statement of
3 his property subject to taxation as now provided by law and
4 giving the estimated value of such property and the
5 department or its agent shall increase such estimated value
6 or add other property to such assessment list, the agent
7 shall, at least 10 days prior to the meeting of the county
8 tax appeal board, give to such person written notice of such
9 change, which notice shall be substantially in the following
10 form:

11 (Date)
12 Mr.:

13 A change has been made in your assessment list as
14 follows:

15 (Set out and describe specifically changes made in
16 list.)

17, Agent
18 Department of Revenue

19 (2) Such person may then appear before the county tax
20 appeal board and contest the same. If the assessment of any
21 such person has been added to or changed, either by the
22 department or by the county tax appeal board, and such
23 person has not been notified thereof and given an
24 opportunity to contest the same before the county tax appeal
25 board, the tax on such increased value or added property

1 shall, upon such facts being established, be adjudged by the
2 court state tax appeal board to be void, and such facts and
3 all questions relating thereto, when said tax has been paid
4 under protest, may be heard and determined in the action
5 provided for in 15-1-402. When--any--person-has-appeared
6 before-the-county-tax-appeal-board--and--has--contested--the
7 increase--in--the--estimated--value--of--his-property-or-the
8 addition-of-other-property-to-his-assessment--list--and--has
9 appealed--to--the--state-tax-appeal-board-from-any-action-or
10 decision-with-reference-thereto-by--the--county--tax--appeal
11 board--and--such--person-is-aggrieved-at-the-final-action-of
12 the-state-tax--appeal--board--in--making--or--allowing--such
13 increase-or-addition,--he-may-pay-the-tax-on-such-increase-or
14 addition--or--the--installments--thereof--if--payable--in
15 installments,--under--protest--in--the--manner--provided--by
16 15-1-402-and-thereupon-and-within-the-time-prescribed-and-in
17 the--manner--provided--by-15-1-402-may-commence-an-action-to
18 recover-such-tax-or-installments-and-in-such-action--contest
19 and--litigate--the--payment--of-such-taxes-on-such-increased
20 value-or-added-property-on-the-same-grounds-and-for-the-same
21 reasons-that-he-has-contested-the-same-before-the-county-and
22 state-tax-appeal-boards-and-for-no-other-reasons-and--on--no
23 other--grounds;--provided--that--all--of--the--provisions-of
24 15-1-402-for-the-retention-or-refunding-of-taxes-paid--under
25 protest--shall--apply-to-taxes-paid-under-protest-under-this

1 section."

2 Section 6. Section 15-2-303, MCA, is amended to read:

3 "15-2-303. Judicial review of contested cases. (1) Any
4 party to an appeal before the state tax appeal board who is
5 aggrieved by a final decision in a contested case is
6 entitled to judicial review under this part.

7 (2) Proceedings for review shall be instituted by
8 filing a petition in district court in the county wherein
9 the taxable property or some portion thereof is located
10 (except the taxpayer may, at his option, file in the
11 district court of the first judicial district) and serving a
12 copy of the petition on the state tax appeal board within 30
13 60 days after service of the final decision of the state tax
14 appeal board or, if a rehearing is requested, within 30 60
15 days after the decision thereon. All parties to the appeal
16 shall cause to be served on the state tax appeal board a
17 copy of all pleadings and documents they shall file in such
18 proceedings.

19 (3) Notwithstanding any other provision, proceedings
20 for review of a decision by the state tax appeal board by a
21 company under the jurisdiction of the public service
22 commission shall be instituted in the district court of the
23 first judicial district.

24 (4) Notwithstanding the provisions of 2-4-704(1), the
25 court may, for good cause shown, permit additional evidence

1 to be introduced."

2 Section 7. Repealer. Sections 15-1-401, 15-15-105, and

3 15-15-106, MCA, are repealed.

-End-





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